IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

Crl.MC.No. 1350 of 2007

(C.C. NO. 157/2005 OF THE COURT OF CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM)

PETITIONER: ACCUSED NO.4

SANJAY V.HARIDAS, HARI KRIPA,
VALLIYIL MUNDAKKAL VILLAGE, ERAVIPURAM,
KOLLAM.

BY ADV. SRI. RAJA VIJAYARAGHAVAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. P.G.THAMBI (DIRECTOR GENERAL OF PROSECUTION)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/06/2007 ALONG WITH CRL.MC NO: 1362/2007 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.Nos.1350,1353,1357,1358,
1359,1360,1362,1369,1370,1388 of 2007

Dated this the 4th day of June 2007

O R D E R

In all these petitions, the same petitioner seeks identical relief. He is the (4th)accused in ten different prosecutions, all under Section 420 I.P.C. The final report in all these ten cases have been filed after completion of investigation in one crime. The crux of the allegations is that accused 1 and 2 had offered employment to a number of persons by making false representations and had extracted large amounts of money from them on the basis of the inducement given with no intention to perform the promises that were given.

2. What then is the role of the petitioner? It is said that the petitioner is the legal advisor of the establishment of accused 1 and 2. There are allegations raised that the petitioner had spoken to the victims about the possibility of securing employment abroad. The learned counsel for the petitioner submits that this and this alone is the allegation raised and that in any view of the matter the petitioner who is, not even a legal advisor of the establishment, cannot be mulcted with any culpable liability for the alleged conduct of his client, even if true.

3. The learned Public Prosecutor submits that the case diary statement has to be perused at length and there is no reason to short

circuit the procedure and consider the question of discharge in these applications under Section 482 Cr.P.C. Final reports have been filed. Cognizance has been taken. The petitioner has entered appearance in all the matters before the learned Magistrate. Hearing under Section 239 Cr.P.C will have to be undertaken now and appropriate decision on the question of framing charge under Section 239/240 Cr.P.C will have to be considered. In these circumstances, there are no circumstances justifying the invocation of the powers under Section 482 Cr.P.C, submits the learned Public Prosecutor.

4. I am inclined to agree with the learned Public Prosecutor. I find no such compelling reasons which would justify the invocation of the powers under Section 482 Cr.P.C. Premature termination of any unjust and undeserved prosecution must also be normally claimed in the normal and regular procedure contemplated by the code of criminal procedure. Of course, in an exceptional case, if the interests of justice compellingly so warrant, premature termination, can be resorted to by invocation of the powers under Section 482 Cr.P.C. Considering the facts and circumstances of the ten cases and considering the stage and progress of the case, I am satisfied that it will only be appropriate to direct the petitioner to seek the relief of discharge at the stage of section 239/240 Cr.P.C before the learned Magistrate.

5. The learned counsel for the petitioner submits that this would involve unnecessary and undeserved delay and the petitioner will have to unnecessarily suffer the trauma of the pending prosecution. I am satisfied that appropriate directions/safeguards can be issued and insisted in this regard also.

6. In the result, these petitions are dismissed but it is observed that the learned Magistrate must expeditiously consider the petitioner's prayer for discharge at the stage of Section 239/240 Cr.P.C. Till such question is decided and a decision is taken that the charges are liable to be framed against the petitioner, the petitioner's personal presence need not be insisted and he can be permitted to be represented by his counsel.

7. With the above observations, these Criminal Miscellaneous Cases are dismissed.

Hand over copy of this order to the learned counsel for the petitioner for production before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007